

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Hugues Malandain  
Serial No. : 10/826,684  
Filed : April 16, 2004  
Title : SUBCUTANEOUS SUPPORT

Art Unit : 3733  
Examiner : Michael J. Araj  
Conf. No. : 9582

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

TERMINAL DISCLAIMER UNDER 37 C.F.R. §§ 3.73(b) AND 1.321(b)

Pursuant to 37 C.F.R. § 3.73(b), KYPHON INC., a corporation, certifies that it is the assignee of the entire right, title, and interest in the above-referenced application by virtue of:

An assignment from the inventors of the above-referenced patent application.

The assignment was recorded in the Patent and Trademark Office at Reel 016015, Frame 0139 on April 5, 2005.

To the best of undersigned's knowledge and belief, title is in the assignee identified above.

The undersigned is empowered to act on behalf of the assignee.

Pursuant to 37 C.F.R. § 1.321(b), and to obviate a double patenting rejection, the assignee identified above hereby waives and disclaims the terminal portion of the term of the entire patent to be granted upon the above-referenced application subsequent to the expiration date of ***the patent to issue from U.S. application serial no. 11/019,918*** provided that any patent granted on the above-referenced application shall be enforceable only for and during such period that it is commonly owned with ***the patent to issue from U.S. application serial no. 11/019,918***.

The assignee identified above does not disclaim any terminal part of any patent granted on the above-referenced application prior to the expiration date of the full statutory term of ***the patent to issue from U.S. application serial no. 11/019,918*** in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321(a), has all claims cancelled by a reexamination certificate, or is otherwise terminated prior to expiration of its statutory term, except for the separation of legal title as stated above. Assignee herein does not disclaim or otherwise affect any part of ***the patent to issue from U.S. application serial no. 11/019,918***.

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Attorney's Docket No.: 17116-004001

This disclaimer runs with any patent granted on the above application and is binding upon the grantee, its successors or assigns.

Please apply the required fee of \$130 and any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: June 18, 2007

/Brian J. Gustafson/

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